

SENATE BILL NO. 455

INTRODUCED BY S. DOHERTY, JUNEAU

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT DOCUMENTS MAY BE RECORDED FOR THE SUBDIVISION AND TRANSFER OF LAND ~~INTO~~ IN AREAS OVER WHICH THE STATE DOES NOT HAVE JURISDICTION; AMENDING SECTIONS 76-3-201, 76-3-301, ~~AND 76-3-302, AND 76-4-122,~~ MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-201, MCA, is amended to read:

"76-3-201. Exemption for certain divisions of land. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) is created to provide security for construction mortgages, liens, or trust indentures;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes; or

(g) is transferred to IN a location over which the state does not have jurisdiction.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division."

Section 2. Section 76-3-301, MCA, is amended to read:

"76-3-301. General restriction on transfer of title to subdivided lands. (1) Except as provided in

76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form unless the plat is located in an area over which the state does not have jurisdiction.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in 76-3-207(1).

(3) If transfers not in accordance with this chapter are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of ~~such~~ the action ~~shall~~ must be imposed against the party not prevailing."

Section 3. Section 76-3-302, MCA, is amended to read:

"76-3-302. Restrictions on recording instruments relating to land subject to surveying requirements. (1) Except as provided in subsection (2), the county clerk and recorder of any county may not record any instrument ~~which~~ that purports to transfer title to or possession of a parcel or tract of land ~~which~~ that is required to be surveyed by this chapter unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(2) Subsection (1) does not apply when the parcel or tract to be transferred:

~~(a) will be transferred to~~ IS IN a location in which the state does not have jurisdiction; or

(b) was created before July 1, 1973, and the instrument of transfer for the parcel or tract includes a reference to a previously recorded instrument of transfer or is accompanied by documents ~~which~~ that, if recorded, would otherwise satisfy the requirements of this subsection. The reference or document must demonstrate that the parcel or tract existed before July 1, 1973.

(3) The reference or documents required in subsection (2) do not constitute a legal description of the property and may not be substituted for a legal description of the property."

SECTION 4. SECTION 76-4-122, MCA, IS AMENDED TO READ:

"76-4-122. Filing or recording of noncomplying map or plat prohibited. (1) The county clerk and recorder may not file or record any map or plat showing a subdivision unless it complies with the provisions of this part.

(2) ~~A~~ Except when a subdivision is in a location in which the state does not have jurisdiction, a
county clerk and recorder may not accept a subdivision plat for filing until one of the following conditions
has been met:

(a) whenever reviewing authority approval is necessary, the person wishing to file the plat has
obtained approval of the local health officer having jurisdiction and has filed the approval with the
reviewing authority, and the reviewing authority has indicated by stamp or certificate that it has approved
the plat and plans and specifications and that the subdivision is not subject to a sanitary restriction; or

(b) whenever reviewing authority approval is not necessary, the person wishing to file the plat has
obtained a certificate from the governing body that the subdivision is inside the jurisdictional area of a
growth policy adopted pursuant to chapter 1 of this title or within a class 1 or class 2 municipality and
will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste."

NEW SECTION. Section 5. Notification to tribal governments. The secretary of state shall send
a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little
Shell band of Chippewa.

NEW SECTION. SECTION 6. COORDINATION INSTRUCTION. IF SENATE BILL NO. 167 IS PASSED AND
APPROVED AND IF IT INCLUDES A SECTION THAT AMENDS 76-4-122 TO ALLOW A COUNTY CLERK AND RECORDER TO FILE
OR RECORD A PLAT WITHOUT APPROVAL BY THE REVIEWING AUTHORITY WHEN THE SUBDIVISION IS EXEMPT FROM REVIEW,
THEN [SECTION 4 OF THIS ACT], AMENDING 76-4-122, IS VOID.

NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

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